

AMENDED IN ASSEMBLY APRIL 9, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 2047

Introduced by Assembly Member Horton

February 19, 2008

An act to amend Sections 7093.6, 9278, 30459.15, 32471.5, 41171.5, 46628, 50156.18, 55332.5, and 60637 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 2047, as amended, Horton. State Board of Equalization: business and special taxes: compromises.

Existing law provides for the administration of various taxes, fees, and surcharges by the State Board of Equalization. The Sales and Use Tax Law, Use Fuel Tax Law, Cigarette and Tobacco Products Tax Law, Alcoholic Beverage Tax Law, Emergency Telephone Users Surcharge Act, Oil Spill Response, Prevention, and Administration Fees Law, Underground Storage Tank Maintenance Fee Law, Fee Collection Procedures Law, and Diesel Fuel Tax Law authorize the State Board of Equalization to compromise a final tax, fee, or surcharge liability that was generated from a business that has been discontinued or transferred, where the person making the offer to compromise no longer has a controlling interest or association with the transferred business or a similar business. Existing law provides for criminal penalties if the person making the offer conceals property, destroys documents, or provides false information.

This bill would authorize the compromise of a final liability that was generated from a business that has been discontinued or transferred,

where the person making the offer of compromise has a controlling interest or association with the transferred business or a similar business.

By expanding the scope of existing criminal penalties, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 7093.6 of the Revenue and Taxation
2 Code is amended to read:

3 7093.6. (a) (1) Beginning January 1, 2003, the executive
4 director and chief counsel of the board, or their delegates, may
5 compromise any final tax liability in which the reduction of tax is
6 seven thousand five hundred dollars (\$7,500) or less.

7 (2) Except as provided in paragraph (3), the board, upon
8 recommendation by its executive director and chief counsel, jointly,
9 may compromise a final tax liability involving a reduction in tax
10 in excess of seven thousand five hundred dollars (\$7,500). Any
11 recommendation for approval of an offer in compromise that is
12 not either approved or disapproved within 45 days of the
13 submission of the recommendation shall be deemed approved.

14 (3) The board, itself, may by resolution delegate to the executive
15 director and the chief counsel, jointly, the authority to compromise
16 a final tax liability in which the reduction of tax is in excess of
17 seven thousand five hundred dollars (\$7,500), but less than ten
18 thousand dollars (\$10,000).

19 (b) For purposes of this section, “a final tax liability” means
20 any final tax liability arising under Part 1 (commencing with
21 Section 6001), Part 1.5 (commencing with Section 7200), Part 1.6
22 (commencing with Section 7251), and Part 1.7 (commencing with
23 Section 7280) or related interest, additions to tax, penalties, or
24 other amounts assessed under this part.

25 (c) (1) Offers in compromise shall be considered only for
26 liabilities that were generated from a business that has been

1 discontinued or transferred, where the taxpayer making the offer
2 no longer has a controlling interest or association with the
3 transferred business or has a controlling interest or association
4 with a similar type of business as the transferred or discontinued
5 business.

6 (2) Notwithstanding paragraph (1), a qualified final tax liability
7 may be compromised regardless of whether the business has been
8 discontinued or transferred or whether the taxpayer has a
9 controlling interest or association with a similar type of business
10 as the transferred or discontinued business. All other provisions
11 of this section that apply to a final tax liability shall also apply to
12 a qualified final tax liability, and no compromise shall be made
13 under this subdivision unless all other requirements of this section
14 are met. For purposes of this subdivision, a “qualified final tax
15 liability” means any of the following:

16 (A) That part of a final tax liability, including related interest,
17 additions to tax, penalties, or other amounts assessed under this
18 part, arising from a transaction or transactions in which ~~there is~~
19 *the board finds* no evidence that the taxpayer collected sales tax
20 reimbursement or use tax from the purchaser or other person and
21 which was determined against the taxpayer under Article 2
22 (commencing with Section 6481), Article 3 (commencing with
23 Section 6511), and Article 5 (commencing with Section 6561) of
24 Chapter 5.

25 (B) A final tax liability, including related interest, additions to
26 tax, penalties, or other amounts assessed under this part, arising
27 under Article 7 (commencing with Section 6811) of Chapter 6.

28 (C) That part of a final tax liability for use tax, including related
29 interest, additions to tax, penalties, or other amounts assessed under
30 this part, determined under Article 2 (commencing with Section
31 6481), Article 3 (commencing with Section 6511), and Article 5
32 (commencing with Section 6561) of Chapter 5, against a taxpayer
33 who is a consumer that is not required to hold a permit under
34 Section 6066.

35 (3) A qualified final tax liability may not be compromised with
36 any of the following:

37 (A) A taxpayer who previously received a compromise under
38 paragraph (2) for a liability, or a part thereof, arising from a
39 transaction or transactions that are substantially similar to the

1 transaction or transactions attributable to the liability for which
2 the taxpayer is making the offer.

3 (B) A business that was transferred by a taxpayer who previously
4 received a compromise under paragraph (2) and who has a
5 controlling interest or association with the transferred business,
6 when the liability for which the offer is made is attributable to a
7 transaction or transactions substantially similar to the transaction
8 or transactions for which the taxpayer's liability was previously
9 compromised.

10 (C) A business in which a taxpayer who previously received a
11 compromise under paragraph (2) has a controlling interest or
12 association with a similar type of business for which the taxpayer
13 received the compromise, when the liability of the business making
14 the offer arose from a transaction or transactions substantially
15 similar to the transaction or transactions for which the taxpayer's
16 liability was previously compromised.

17 (d) The board may, in its discretion, enter into ~~an~~ *a written*
18 agreement that permits the taxpayer to pay the compromise in
19 installments for a period not exceeding one year. The agreement
20 may provide that the installments shall be paid by electronic funds
21 transfers or any other means to facilitate the payment of each
22 installment.

23 (e) Except for any recommendation for approval as specified
24 in subdivision (a), the members of the State Board of Equalization
25 shall not participate in any offer in compromise matters pursuant
26 to this section.

27 (f) A taxpayer that has received a compromise under paragraph
28 (2) of subdivision (c) may be required to enter into any collateral
29 agreement that is deemed necessary for the protection of the
30 interests of the state. A collateral agreement may include a
31 provision that allows the board to reestablish the liability, or any
32 portion thereof, if the taxpayer has sufficient annual income during
33 the succeeding five-year period. The board shall establish criteria
34 for determining "sufficient annual income" for purposes of this
35 subdivision.

36 (g) A taxpayer that has received a compromise under paragraph
37 (2) of subdivision (c) shall file and pay by the due date all
38 subsequently required sales and use tax returns for a five-year
39 period from the date the liability is compromised, or until the

1 taxpayer is no longer required to file sales and use tax returns,
2 whichever period is earlier.

3 (h) For amounts to be compromised under this section, the
4 following conditions shall exist:

5 (1) The taxpayer shall establish that:

6 (A) The amount offered in payment is the most that can be
7 expected to be paid or collected from the taxpayer's present assets
8 or income.

9 (B) The taxpayer does not have reasonable prospects of
10 acquiring increased income or assets that would enable the taxpayer
11 to satisfy a greater amount of the liability than the amount offered,
12 within a reasonable period of time.

13 (2) The board shall have determined that acceptance of the
14 compromise is in the best interest of the state.

15 (i) A determination by the board that it would not be in the best
16 interest of the state to accept an offer in compromise in satisfaction
17 of a final tax liability shall not be subject to administrative appeal
18 or judicial review.

19 (j) When an offer in compromise is either accepted or rejected,
20 or the terms and conditions of a compromise agreement are
21 fulfilled, the board shall notify the taxpayer in writing. In the event
22 an offer is rejected, the amount posted will either be applied to the
23 liability or refunded, at the discretion of the taxpayer.

24 (k) When more than one taxpayer is liable for the debt, such as
25 with spouses or partnerships or other business combinations, the
26 acceptance of an offer in compromise from one liable taxpayer
27 shall not relieve the other taxpayers from paying the entire liability.
28 However, the amount of the liability shall be reduced by the amount
29 of the accepted offer.

30 (l) Whenever a compromise of tax or penalties or total tax and
31 penalties in excess of five hundred dollars (\$500) is approved,
32 there shall be placed on file for a least one year in the office of the
33 executive director of the board a public record with respect to that
34 compromise. The public record shall include all of the following
35 information:

36 (1) The name of the taxpayer.

37 (2) The amount of unpaid tax and related penalties, additions
38 to tax, interest, or other amounts involved.

39 (3) The amount offered.

1 (4) A summary of the reason why the compromise is in the best
2 interest of the state.

3 The public record shall not include any information that relates
4 to any trade secrets, patent, process, style of work, apparatus,
5 business secret, or organizational structure, that if disclosed, would
6 adversely affect the taxpayer or violate the confidentiality
7 provisions of Section 7056. No list shall be prepared and no
8 releases distributed by the board in connection with these
9 statements.

10 (m) Any compromise made under this section may be rescinded,
11 all compromised liabilities may be reestablished (without regard
12 to any statute of limitations that otherwise may be applicable), and
13 no portion of the amount offered in compromise refunded, if either
14 of the following occurs:

15 (1) The board determines that any person did any of the
16 following acts regarding the making of the offer:

17 (A) Concealed from the board any property belonging to the
18 estate of any taxpayer or other person liable for the tax.

19 (B) Received, withheld, destroyed, mutilated, or falsified any
20 book, document, or record or made any false statement, relating
21 to the estate or financial condition of the taxpayer or other person
22 liable for the tax.

23 (2) The taxpayer fails to comply with any of the terms and
24 conditions relative to the offer.

25 (n) Any person who, in connection with any offer or compromise
26 under this section, or offer of that compromise to enter into that
27 agreement, willfully does either of the following shall be guilty of
28 a felony and, upon conviction, shall be fined not more than fifty
29 thousand dollars (\$50,000) or imprisoned in the state prison, or
30 both, together with the costs of investigation and prosecution:

31 (1) Conceals from any officer or employee of this state any
32 property belonging to the estate of a taxpayer or other person liable
33 in respect of the tax.

34 (2) Receives, withholds, destroys, mutilates, or falsifies any
35 book, document, or record, or makes any false statement, relating
36 to the estate or financial condition of the taxpayer or other person
37 liable in respect of the tax.

38 (o) For purposes of this section, "person" means the taxpayer,
39 any member of the taxpayer's family, any corporation, agent,
40 fiduciary, or representative of, or any other individual or entity

1 acting on behalf of, the taxpayer, or any other corporation or entity
2 owned or controlled by the taxpayer, directly or indirectly, or that
3 owns or controls the taxpayer, directly or indirectly.

4 SEC. 2. Section 9278 of the Revenue and Taxation Code is
5 amended to read:

6 9278. (a) (1) Beginning January 1, 2003, the executive director
7 and chief counsel of the board, or their delegates, may compromise
8 any final tax liability in which the reduction of tax is seven
9 thousand five hundred dollars (\$7,500) or less.

10 (2) Except as provided in paragraph (3), the board, upon
11 recommendation by its executive director and chief counsel, jointly,
12 may compromise a final tax liability involving a reduction in tax
13 in excess of seven thousand five hundred dollars (\$7,500). Any
14 recommendation for approval of an offer in compromise that is
15 not either approved or disapproved within 45 days of the
16 submission of the recommendation shall be deemed approved.

17 (3) The board, itself, may by resolution delegate to the executive
18 director and the chief counsel, jointly, the authority to compromise
19 a final tax liability in which the reduction of tax is in excess of
20 seven thousand five hundred dollars (\$7,500), but less than ten
21 thousand dollars (\$10,000).

22 (b) For purposes of this section, “a final tax liability” means
23 any final tax liability arising under Part 3 (commencing with
24 Section 8601), or related interest, additions to tax, penalties, or
25 other amounts assessed under this part.

26 (c) (1) Offers in compromise shall be considered only for
27 liabilities that were generated from a business that has been
28 discontinued or transferred, where the taxpayer making the offer
29 no longer has a controlling interest or association with the
30 transferred business or has a controlling interest or association
31 with a similar type of business as the transferred or discontinued
32 business.

33 (2) Notwithstanding paragraph (1), a qualified final tax liability
34 may be compromised regardless of whether the business has been
35 discontinued or transferred or whether the taxpayer has a
36 controlling interest or association with a similar type of business
37 as the transferred or discontinued business. All other provisions
38 of this section that apply to a final tax liability shall also apply to
39 a qualified final tax liability, and no compromise shall be made
40 under this subdivision unless all other requirements of this section

1 are met. For purposes of this subdivision, a “qualified final tax
2 liability” means either of the following:

3 (A) That part of a final tax liability, including related interest,
4 additions to tax, penalties or other amounts assessed under this
5 part, arising from a transaction or transactions in which ~~there is~~
6 *the board finds* no evidence that the vendor collected use fuel tax
7 reimbursement from the purchaser or other person and which was
8 determined against the vendor under Article 2 (commencing with
9 Section 8776), Article 3 (commencing with Section 8801), or
10 Article 5 (commencing with Section 8851) of Chapter 4.

11 (B) A final tax liability, including related interest, additions to
12 tax, penalties or other amounts assessed under this part, arising
13 under Article 4.5 (commencing with Section 9021) of Chapter 5.

14 (3) A qualified final tax liability may not be compromised with
15 any of the following:

16 (A) A taxpayer who previously received a compromise under
17 paragraph (2) for a liability, or a part thereof, arising from a
18 transaction or transactions that are substantially similar to the
19 transaction or transactions attributable to the liability for which
20 the taxpayer is making the offer.

21 (B) A business that was transferred by a taxpayer who previously
22 received a compromise under paragraph (2) and who has a
23 controlling interest or association with the transferred business,
24 when the liability for which the offer is made is attributable to a
25 transaction or transactions substantially similar to the transaction
26 or transactions for which the taxpayer’s liability was previously
27 compromised.

28 (C) A business in which a taxpayer who previously received a
29 compromise under paragraph (2) has a controlling interest or
30 association with a similar type of business for which the taxpayer
31 received the compromise, when the liability of the business making
32 the offer arose from a transaction or transactions substantially
33 similar to the transaction or transactions for which the taxpayer’s
34 liability was previously compromised.

35 (d) The board may, in its discretion, enter into ~~an~~ *a written*
36 agreement which permits the taxpayer to pay the compromise in
37 installments for a period not exceeding one year. The agreement
38 may provide that such installments shall be paid by electronic
39 funds transfers or any other means to facilitate the payment of each
40 installment.

1 (e) Except for any recommendation for approval as specified
2 in subdivision (a), the members of the State Board of Equalization
3 shall not participate in any offer in compromise matters pursuant
4 to this section.

5 (f) A taxpayer that has received a compromise under paragraph
6 (2) of subdivision (c) may be required to enter into any collateral
7 agreement that is deemed necessary for the protection of the
8 interests of the state. A collateral agreement may include a
9 provision that allows the board to reestablish the liability, or any
10 portion thereof, if the taxpayer has sufficient annual income during
11 the succeeding five-year period. The board shall establish criteria
12 for determining “sufficient annual income” for purposes of this
13 subdivision.

14 (g) A taxpayer that has received a compromise under paragraph
15 (2) of subdivision (c) shall file and pay by the due date all
16 subsequently required use fuel tax returns for a five-year period
17 from the date the liability is compromised, or until the taxpayer is
18 no longer required to file use fuel tax returns, whichever period is
19 earlier.

20 (h) For amounts to be compromised under this section, the
21 following conditions shall exist:

22 (1) The taxpayer shall establish that:

23 (A) The amount offered in payment is the most that can be
24 expected to be paid or collected from the taxpayer’s present assets
25 or income.

26 (B) The taxpayer does not have reasonable prospects of
27 acquiring increased income or assets that would enable the taxpayer
28 to satisfy a greater amount of the liability than the amount offered,
29 within a reasonable period of time.

30 (2) The board shall have determined that acceptance of the
31 compromise is in the best interest of the state.

32 (i) A determination by the board that it would not be in the best
33 interest of the state to accept an offer in compromise in satisfaction
34 of a final tax liability shall not be subject to administrative appeal
35 or judicial review.

36 (j) When an offer in compromise is either accepted or rejected,
37 or the terms and conditions of a compromise agreement are
38 fulfilled, the board shall notify the taxpayer in writing. In the event
39 an offer is rejected, the amount posted will either be applied to the
40 liability or refunded, at the discretion of the taxpayer.

(k) When more than one taxpayer is liable for the debt, such as with spouses or partnerships or other business combinations, the acceptance of an offer in compromise from one liable taxpayer shall not relieve the other taxpayers from paying the entire liability. However, the amount of the liability shall be reduced by the amount of the accepted offer.

(l) Whenever a compromise of tax or penalties or total tax and penalties in excess of five hundred dollars (\$500) is approved, there shall be placed on file for a least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:

(1) The name of the taxpayer.

(2) The amount of unpaid tax and related penalties, additions to tax, interest, or other amounts involved.

(3) The amount offered.

(4) A summary of the reason why the compromise is in the best interest of the state.

The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the taxpayer or violate the confidentiality provisions of Section 9255. No list shall be prepared and no releases distributed by the board in connection with these statements.

(m) Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished (without regard to any statute of limitations that otherwise may be applicable), and no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The board determines that any person did any of the following acts regarding the making of the offer:

(A) Concealed from the board any property belonging to the estate of any taxpayer or other person liable for the tax.

(B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating to the estate or financial condition of the taxpayer or other person liable for the tax.

(2) The taxpayer fails to comply with any of the terms and conditions relative to the offer.

1 (n) Any person who, in connection with any offer or compromise
2 under this section, or offer of that compromise to enter into that
3 agreement, willfully does either of the following shall be guilty of
4 a felony and, upon conviction, shall be fined not more than fifty
5 thousand dollars (\$50,000) or imprisoned in the state prison, or
6 both, together with the costs of investigation and prosecution:

7 (1) Conceals from any officer or employee of this state any
8 property belonging to the estate of a taxpayer or other person liable
9 in respect of the tax.

10 (2) Receives, withholds, destroys, mutilates, or falsifies any
11 book, document, or record, or makes any false statement, relating
12 to the estate or financial condition of the taxpayer or other person
13 liable in respect of the tax.

14 (o) For purposes of this section, “person” means the taxpayer,
15 any member of the taxpayer’s family, any corporation, agent,
16 fiduciary, or representative of, or any other individual or entity
17 acting on behalf of, the taxpayer, or any other corporation or entity
18 owned or controlled by the taxpayer, directly or indirectly, or that
19 owns or controls the taxpayer, directly or indirectly.

20 SEC. 3. Section 30459.15 of the Revenue and Taxation Code
21 is amended to read:

22 30459.15. (a) (1) Beginning on January 1, 2007, the executive
23 director and chief counsel of the board, or their delegates, may
24 compromise any final tax liability where the reduction of tax is
25 seven thousand five hundred dollars (\$7,500) or less.

26 (2) Except as provided in paragraph (3), the board, upon
27 recommendation by its executive director and chief counsel, jointly,
28 may compromise a final tax liability involving a reduction in tax
29 in excess of seven thousand five hundred dollars (\$7,500). Any
30 recommendation for approval of an offer in compromise that is
31 not either approved or disapproved within 45 days of the
32 submission of the recommendation shall be deemed approved.

33 (3) The board, itself, may by resolution delegate to the executive
34 director and the chief counsel, jointly, the authority to compromise
35 a final tax liability in which the reduction of tax is in excess of
36 seven thousand five hundred dollars (\$7,500), but less than ten
37 thousand dollars (\$10,000).

38 (b) For purposes of this section, “a final tax liability” means
39 any final tax liability arising under Part 13 (commencing with

1 Section 30001), or related interest, additions to tax, penalties, or
2 other amounts assessed under this part.

3 (c) Offers in compromise shall be considered only for liabilities
4 that were generated by the following:

5 (1) A business that has been discontinued or transferred, where
6 the taxpayer making the offer no longer has a controlling interest
7 or association with the transferred business or has a controlling
8 interest or association with a similar type of business as the
9 transferred or discontinued business.

10 (2) A taxpayer that has purchased untaxed cigarettes or tobacco
11 products from out-of-state vendors for their own use or
12 consumption.

13 (3) Notwithstanding paragraph (1) or (2), a qualified final tax
14 liability may be compromised regardless of whether the business
15 has been discontinued or transferred or whether the taxpayer has
16 a controlling interest or association with a similar type of business
17 as the transferred or discontinued business. All other provisions
18 of this section that apply to a final tax liability shall also apply to
19 a qualified final tax liability, and no compromise shall be made
20 under this subdivision unless all other requirements of this section
21 are met. For purposes of this subdivision, a “qualified final tax
22 liability” means either of the following:

23 (A) That part of a final tax liability, including related interest,
24 additions to tax, penalties or other amounts assessed under this
25 part, arising from a transaction or transactions in which ~~there is~~
26 *the board finds* no evidence that the taxpayer collected cigarette
27 or tobacco products tax reimbursement or cigarette or tobacco
28 products tax reimbursement from the purchaser or other person
29 and which was determined against the taxpayer under Article 2
30 (commencing with Section 30201), Article 3 (commencing with
31 Section 30221), or Article 5 (commencing with Section 30261) of
32 Chapter 4.

33 (B) That part of a final tax liability for cigarette or tobacco
34 products tax, including related interest, additions to tax, penalties
35 or other amounts assessed under this part, determined under Article
36 2 (commencing with Section 30201), Article 3 (commencing with
37 Section 30221), and Article 5 (commencing with Section 30261)
38 of Chapter 4 against a taxpayer who is a consumer that is not
39 required to hold a license under Article 1 (commencing with
40 Section 30140) of Chapter 3.

1 (4) A qualified final tax liability may not be compromised with
2 any of the following:

3 (A) A taxpayer who previously received a compromise under
4 paragraph (2) for a liability, or a part thereof, arising from a
5 transaction or transactions that are substantially similar to the
6 transaction or transactions attributable to the liability for which
7 the taxpayer is making the offer.

8 (B) A business that was transferred by a taxpayer who previously
9 received a compromise under paragraph (2) and who has a
10 controlling interest or association with the transferred business,
11 when the liability for which the offer is made is attributable to a
12 transaction or transactions substantially similar to the transaction
13 or transactions for which the taxpayer's liability was previously
14 compromised.

15 (C) A business in which a taxpayer who previously received a
16 compromise under paragraph (2) has a controlling interest or
17 association with a similar type of business for which the taxpayer
18 received the compromise, when the liability of the business making
19 the offer arose from a transaction or transactions substantially
20 similar to the transaction or transactions for which the taxpayer's
21 liability was previously compromised.

22 (d) The board may, in its discretion, enter into ~~an~~ *a written*
23 agreement which permits the taxpayer to pay the compromise in
24 installments for a period not exceeding one year. The agreement
25 may provide that such installments shall be paid by electronic
26 funds transfers or any other means to facilitate the payment of each
27 installment.

28 (e) Except for any recommendation for approval as specified
29 in subdivision (a), the members of the State Board of Equalization
30 shall not participate in any offer in compromise matters pursuant
31 to this section.

32 (f) A taxpayer that has received a compromise under paragraph
33 (2) of subdivision (c) may be required to enter into any collateral
34 agreement that is deemed necessary for the protection of the
35 interests of the state. A collateral agreement may include a
36 provision that allows the board to reestablish the liability, or any
37 portion thereof, if the taxpayer has sufficient annual income during
38 the succeeding five-year period. The board shall establish criteria
39 for determining "sufficient annual income" for purposes of this
40 subdivision.

(g) A taxpayer that has received a compromise under paragraph (2) of subdivision (c) shall file and pay by the due date all subsequently required cigarette and tobacco products tax reports or returns for a five-year period from the date the liability is compromised, or until the taxpayer is no longer required to file cigarette and tobacco products tax reports or returns, whichever period is earlier.

(h) Offers in compromise shall not be considered under the following conditions:

(1) The taxpayer has been convicted of felony tax evasion under this part during the liability period.

(2) The taxpayer has filed a statement under paragraph (3) of subdivision (i) and continues to purchase untaxed cigarettes or tobacco products from out-of-state vendors for their own use or consumption.

(i) For amounts to be compromised under this section, the following conditions shall exist:

(1) The taxpayer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the taxpayer's present assets or income.

(B) The taxpayer does not have reasonable prospects of acquiring increased income or assets that would enable the taxpayer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

(3) For liabilities generated in the manner described in paragraph (2) of subdivision (c), the taxpayer shall file with the board a statement, under penalty of perjury, that he or she will no longer purchase untaxed cigarettes or tobacco products from out-of-state vendors for his or her own use or consumption.

(j) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final tax liability shall not be subject to administrative appeal or judicial review.

(k) (1) Offers for liabilities with a fraud or evasion penalty shall require a minimum offer of the unpaid tax and fraud or evasion penalty.

1 (2) The minimum offer may be waived if it can be shown that
2 the taxpayer making the offer was not the person responsible for
3 perpetrating the fraud or evasion. This authorization to waive only
4 applies to partnership accounts where the intent to commit fraud
5 or evasion can be clearly attributed to a partner of the taxpayer.

6 (l) When an offer in compromise is either accepted or rejected,
7 or the terms and conditions of a compromise agreement are
8 fulfilled, the board shall notify the taxpayer in writing. In the event
9 an offer is rejected, the amount posted will either be applied to the
10 liability or refunded, at the discretion of the taxpayer.

11 (m) When more than one taxpayer is liable for the debt, such
12 as with spouses or partnerships or other business combinations,
13 including, but not limited to, taxpayers who are liable through dual
14 determination or successor's liability, the acceptance of an offer
15 in compromise from one liable taxpayer shall reduce the amount
16 of the liability of the other taxpayers by the amount of the accepted
17 offer.

18 (n) Whenever a compromise of tax or penalties or total tax and
19 penalties in excess of five hundred dollars (\$500) is approved,
20 there shall be placed on file for at least one year in the office of
21 the executive director of the board a public record with respect to
22 that compromise. The public record shall include all of the
23 following information:

24 (1) The name of the taxpayer.

25 (2) The amount of unpaid tax and related penalties, additions
26 to tax, interest, or other amounts involved.

27 (3) The amount offered.

28 (4) A summary of the reason why the compromise is in the best
29 interest of the state.

30 The public record shall not include any information that relates
31 to any trade secrets, patent, process, style of work, apparatus,
32 business secret, or organizational structure, that if disclosed, would
33 adversely affect the taxpayer or violate the confidentiality
34 provisions of Section 30455. No list shall be prepared and no
35 releases distributed by the board in connection with these
36 statements.

37 (o) Any compromise made under this section may be rescinded,
38 all compromised liabilities may be reestablished, without regard
39 to any statute of limitations that otherwise may be applicable, and

1 no portion of the amount offered in compromise refunded, if either
2 of the following occurs:

3 (1) The board determines that any person did any of the
4 following acts regarding the making of the offer:

5 (A) Concealed from the board any property belonging to the
6 estate of any taxpayer or other person liable for the tax.

7 (B) Received, withheld, destroyed, mutilated, or falsified any
8 book, document, or record or made any false statement, relating
9 to the estate or financial condition of the taxpayer or other person
10 liable for the tax.

11 (2) The taxpayer fails to comply with any of the terms and
12 conditions relative to the offer.

13 (p) Any person who, in connection with any offer or compromise
14 under this section, or offer of that compromise to enter into that
15 agreement, willfully does either of the following shall be guilty of
16 a felony and, upon conviction, shall be fined not more than fifty
17 thousand dollars (\$50,000) or imprisoned in the state prison, or
18 both, together with the costs of investigation and prosecution:

19 (1) Conceals from any officer or employee of this state any
20 property belonging to the estate of a taxpayer or other person liable
21 in respect of the tax.

22 (2) Receives, withholds, destroys, mutilates, or falsifies any
23 book, document, or record, or makes any false statement, relating
24 to the estate or financial condition of the taxpayer or other person
25 liable in respect of the tax.

26 (q) For purposes of this section, "person" means the taxpayer,
27 any member of the taxpayer's family, any corporation, agent,
28 fiduciary, or representative of, or any other individual or entity
29 acting on behalf of, the taxpayer, or any other corporation or entity
30 owned or controlled by the taxpayer, directly or indirectly, or that
31 owns or controls the taxpayer, directly or indirectly.

32 SEC. 4. Section 32471.5 of the Revenue and Taxation Code
33 is amended to read:

34 32471.5. (a) (1) Beginning on January 1, 2007, the executive
35 director and chief counsel of the board, or their delegates, may
36 compromise any final tax liability where the reduction of tax is
37 seven thousand five hundred dollars (\$7,500) or less.

38 (2) Except as provided in paragraph (3), the board, upon
39 recommendation by its executive director and chief counsel, jointly,
40 may compromise a final tax liability involving a reduction in tax

1 in excess of seven thousand five hundred dollars (\$7,500). Any
2 recommendation for approval of an offer in compromise that is
3 not either approved or disapproved within 45 days of the
4 submission of the recommendation shall be deemed approved.

5 (3) The board, itself, may by resolution delegate to the executive
6 director and the chief counsel, jointly, the authority to compromise
7 a final tax liability in which the reduction of tax is in excess of
8 seven thousand five hundred dollars (\$7,500), but less than ten
9 thousand dollars (\$10,000).

10 (b) For purposes of this section, “a final tax liability” means
11 any final tax liability arising under Part 14 (commencing with
12 Section 32001), or related interest, additions to tax, penalties, or
13 other amounts assessed under this part.

14 (c) (1) Offers in compromise shall be considered only for
15 liabilities that were generated by a business that has been
16 discontinued or transferred, where the taxpayer making the offer
17 no longer has a controlling interest or association with the
18 transferred business or has a controlling interest or association
19 with a similar type of business as the transferred or discontinued
20 business.

21 (2) Notwithstanding paragraph (1), a qualified final tax liability
22 may be compromised regardless of whether the business has been
23 discontinued or transferred or whether the taxpayer has a
24 controlling interest or association with a similar type of business
25 as the transferred or discontinued business. All other provisions
26 of this section that apply to a final tax liability shall also apply to
27 a qualified final tax liability, and no compromise shall be made
28 under this subdivision unless all other requirements of this section
29 are met. For purposes of this subdivision, a “qualified final tax
30 liability” means that part of a final tax liability, including related
31 interest, additions to tax, penalties or other amounts assessed under
32 this part, arising from a transaction or transactions in which ~~there~~
33 *is the board finds* no evidence that the taxpayer collected
34 reimbursement or tax reimbursement from the purchaser or other
35 person and which was determined against the taxpayer under
36 Article 2 (commencing with Section 32271), Article 3
37 (commencing with Section 32291), or Article 4 (commencing with
38 Section 32301) of Chapter 6.

39 (3) A qualified final tax liability may not be compromised with
40 any of the following:

1 (A) A taxpayer who previously received a compromise under
2 paragraph (2) for a liability, or a part thereof, arising from a
3 transaction or transactions that are substantially similar to the
4 transaction or transactions attributable to the liability for which
5 the taxpayer is making the offer.

6 (B) A business that was transferred by a taxpayer who previously
7 received a compromise under paragraph (2) and who has a
8 controlling interest or association with the transferred business,
9 when the liability for which the offer is made is attributable to a
10 transaction or transactions substantially similar to the transaction
11 or transactions for which the taxpayer's liability was previously
12 compromised.

13 (C) A business in which a taxpayer who previously received a
14 compromise under paragraph (2) has a controlling interest or
15 association with a similar type of business for which the taxpayer
16 received the compromise, when the liability of the business making
17 the offer arose from a transaction or transactions substantially
18 similar to the transaction or transactions for which the taxpayer's
19 liability was previously compromised.

20 (d) The board may, in its discretion, enter into ~~an~~ *a written*
21 agreement which permits the taxpayer to pay the compromise in
22 installments for a period not exceeding one year. The agreement
23 may provide that such installments shall be paid by electronic
24 funds transfers or any other means to facilitate the payment of each
25 installment.

26 (e) Except for any recommendation for approval as specified
27 in subdivision (a), the members of the State Board of Equalization
28 shall not participate in any offer in compromise matters pursuant
29 to this section.

30 (f) A taxpayer that has received a compromise under paragraph
31 (2) of subdivision (c) may be required to enter into any collateral
32 agreement that is deemed necessary for the protection of the
33 interests of the state. A collateral agreement may include a
34 provision that allows the board to reestablish the liability, or any
35 portion thereof, if the taxpayer has sufficient annual income during
36 the succeeding five-year period. The board shall establish criteria
37 for determining "sufficient annual income" for purposes of this
38 subdivision.

39 (g) A taxpayer that has received a compromise under paragraph
40 (2) of subdivision (c) shall file and pay by the due date all

1 subsequently required tax returns and reports for a five-year period
2 from the date the liability is compromised, or until the taxpayer is
3 no longer required to file tax returns and reports, whichever period
4 is earlier.

5 (h) Offers in compromise shall not be considered where the
6 taxpayer has been convicted of felony tax evasion under this part
7 during the liability period.

8 (i) For amounts to be compromised under this section, the
9 following conditions shall exist:

10 (1) The taxpayer shall establish that:

11 (A) The amount offered in payment is the most that can be
12 expected to be paid or collected from the taxpayer's present assets
13 or income.

14 (B) The taxpayer does not have reasonable prospects of
15 acquiring increased income or assets that would enable the taxpayer
16 to satisfy a greater amount of the liability than the amount offered,
17 within a reasonable period of time.

18 (2) The board shall have determined that acceptance of the
19 compromise is in the best interest of the state.

20 (j) A determination by the board that it would not be in the best
21 interest of the state to accept an offer in compromise in satisfaction
22 of a final tax liability shall not be subject to administrative appeal
23 or judicial review.

24 (k) (1) Offers for liabilities with a fraud or evasion penalty shall
25 require a minimum offer of the unpaid tax and fraud or evasion
26 penalty.

27 (2) The minimum offer may be waived if it can be shown that
28 the taxpayer making the offer was not the person responsible for
29 perpetrating the fraud or evasion. This authorization to waive only
30 applies to partnership accounts where the intent to commit fraud
31 or evasion can be clearly attributed to a partner of the taxpayer.

32 (l) When an offer in compromise is either accepted or rejected,
33 or the terms and conditions of a compromise agreement are
34 fulfilled, the board shall notify the taxpayer in writing. In the event
35 an offer is rejected, the amount posted will either be applied to the
36 liability or refunded, at the discretion of the taxpayer.

37 (m) When more than one taxpayer is liable for the debt, such
38 as with spouses or partnerships or other business combinations,
39 including, but not limited to, taxpayers who are liable through dual
40 determination or successor's liability, the acceptance of an offer

1 in compromise from one liable taxpayer shall reduce the amount
2 of the liability of the other taxpayers by the amount of the accepted
3 offer.

4 (n) Whenever a compromise of tax or penalties or total tax and
5 penalties in excess of five hundred dollars (\$500) is approved,
6 there shall be placed on file for at least one year in the office of
7 the executive director of the board a public record with respect to
8 that compromise. The public record shall include all of the
9 following information:

10 (1) The name of the taxpayer.

11 (2) The amount of unpaid tax and related penalties, additions
12 to tax, interest, or other amounts involved.

13 (3) The amount offered.

14 (4) A summary of the reason why the compromise is in the best
15 interest of the state.

16 The public record shall not include any information that relates
17 to any trade secrets, patent, process, style of work, apparatus,
18 business secret, or organizational structure, that if disclosed, would
19 adversely affect the taxpayer or violate the confidentiality
20 provisions of Section 32455. No list shall be prepared and no
21 releases distributed by the board in connection with these
22 statements.

23 (o) Any compromise made under this section may be rescinded,
24 all compromised liabilities may be reestablished, without regard
25 to any statute of limitations that otherwise may be applicable, and
26 no portion of the amount offered in compromise refunded, if either
27 of the following occurs:

28 (1) The board determines that any person did any of the
29 following acts regarding the making of the offer:

30 (A) Concealed from the board any property belonging to the
31 estate of any taxpayer or other person liable for the tax.

32 (B) Received, withheld, destroyed, mutilated, or falsified any
33 book, document, or record or made any false statement, relating
34 to the estate or financial condition of the taxpayer or other person
35 liable for the tax.

36 (2) The taxpayer fails to comply with any of the terms and
37 conditions relative to the offer.

38 (p) Any person who, in connection with any offer or compromise
39 under this section, or offer of that compromise to enter into that
40 agreement, willfully does either of the following shall be guilty of

1 a felony and, upon conviction, shall be fined not more than fifty
2 thousand dollars (\$50,000) or imprisoned in the state prison, or
3 both, together with the costs of investigation and prosecution:

4 (1) Conceals from any officer or employee of this state any
5 property belonging to the estate of a taxpayer or other person liable
6 in respect of the tax.

7 (2) Receives, withholds, destroys, mutilates, or falsifies any
8 book, document, or record, or makes any false statement, relating
9 to the estate or financial condition of the taxpayer or other person
10 liable in respect of the tax.

11 (q) For purposes of this section, “person” means the taxpayer,
12 any member of the taxpayer’s family, any corporation, agent,
13 fiduciary, or representative of, or any other individual or entity
14 acting on behalf of, the taxpayer, or any other corporation or entity
15 owned or controlled by the taxpayer, directly or indirectly, or that
16 owns or controls the taxpayer, directly or indirectly.

17 SEC. 5. Section 41171.5 of the Revenue and Taxation Code
18 is amended to read:

19 41171.5. (a) (1) Beginning on January 1, 2007, the executive
20 director and chief counsel of the board, or their delegates, may
21 compromise any final surcharge liability where the reduction of
22 surcharges is seven thousand five hundred dollars (\$7,500) or less.

23 (2) Except as provided in paragraph (3), the board, upon
24 recommendation by its executive director and chief counsel, jointly,
25 may compromise a final surcharge liability involving a reduction
26 in surcharges in excess of seven thousand five hundred dollars
27 (\$7,500). Any recommendation for approval of an offer in
28 compromise that is not either approved or disapproved within 45
29 days of the submission of the recommendation shall be deemed
30 approved.

31 (3) The board, itself, may by resolution delegate to the executive
32 director and the chief counsel, jointly, the authority to compromise
33 a final surcharge liability in which the reduction of surcharges is
34 in excess of seven thousand five hundred dollars (\$7,500), but less
35 than ten thousand dollars (\$10,000).

36 (b) For purposes of this section, “a final surcharge liability”
37 means any final surcharge liability arising under Part 20
38 (commencing with Section 41001), or related interest, additions
39 to surcharges, penalties, or other amounts assessed under this part.

1 (c) (1) Offers in compromise shall be considered only for
2 liabilities that were generated from a business that has been
3 discontinued or transferred, where the surcharge payer making the
4 offer no longer has a controlling interest or association with the
5 transferred business or has a controlling interest or association
6 with a similar type of business as the transferred or discontinued
7 business.

8 (2) Notwithstanding paragraph (1), a qualified final surcharge
9 liability may be compromised regardless of whether the business
10 has been discontinued or transferred or whether the surcharge
11 payer has a controlling interest or association with a similar type
12 of business as the transferred or discontinued business. All other
13 provisions of this section that apply to a final surcharge liability
14 shall also apply to a qualified final surcharge liability, and no
15 compromise shall be made under this subdivision unless all other
16 requirements of this section are met. For purposes of this
17 subdivision, a “qualified final surcharge liability” means either of
18 the following:

19 (A) That part of a final surcharge liability, including related
20 interest, additions to surcharge, penalties or other amounts assessed
21 under this part, arising from a transaction or transactions in which
22 ~~there is the board finds~~ no evidence that the service supplier
23 collected the surcharge from the service user or other person and
24 which was determined against the service supplier under Article
25 3 (commencing with Section 41070), Article 4 (commencing with
26 Section 41080), or Article 5 (commencing with Section 41085) of
27 Chapter 4.

28 (B) That part of a final surcharge liability, including related
29 interest, additions to surcharge, penalties or other amounts assessed
30 under this part, determined under Article 3 (commencing with
31 Section 41070), Article 4 (commencing with Section 41080), and
32 Article 5 (commencing with Section 41085) of Chapter 4 against
33 a service user who is a consumer that is not required to register
34 with the board under Article 3 (commencing with section 41040)
35 of Chapter 2.

36 (3) A qualified final surcharge liability may not be compromised
37 with any of the following:

38 (A) A surcharge payer who previously received a compromise
39 under paragraph (2) for a liability, or a part thereof, arising from
40 a transaction or transactions that are substantially similar to the

1 transaction or transactions attributable to the liability for which
2 the surcharge payer is making the offer.

3 (B) A business that was transferred by a surcharge payer who
4 previously received a compromise under paragraph (2) and who
5 has a controlling interest or association with the transferred
6 business, when the liability for which the offer is made is
7 attributable to a transaction or transactions substantially similar to
8 the transaction or transactions for which the surcharge payer's
9 liability was previously compromised.

10 (C) A business in which a surcharge payer who previously
11 received a compromise under paragraph (2) has a controlling
12 interest or association with a similar type of business for which
13 the surcharge payer received the compromise, when the liability
14 of the business making the offer arose from a transaction or
15 transactions substantially similar to the transaction or transactions
16 for which the surcharge payer's liability was previously
17 compromised.

18 (d) The board may, in its discretion, enter into ~~an~~ *a written*
19 agreement which permits the surcharge payer to pay the
20 compromise in installments for a period not exceeding one year.
21 The agreement may provide that such installments shall be paid
22 by electronic funds transfers or any other means to facilitate the
23 payment of each installment.

24 (e) Except for any recommendation for approval as specified
25 in subdivision (a), the members of the State Board of Equalization
26 shall not participate in any offer in compromise matters pursuant
27 to this section.

28 (f) A surcharge payer that has received a compromise under
29 paragraph (2) of subdivision (c) may be required to enter into any
30 collateral agreement that is deemed necessary for the protection
31 of the interests of the state. A collateral agreement may include a
32 provision that allows the board to reestablish the liability, or any
33 portion thereof, if the surcharge payer has sufficient annual income
34 during the succeeding five-year period. The board shall establish
35 criteria for determining "sufficient annual income" for purposes
36 of this subdivision.

37 (g) A surcharge payer that has received a compromise under
38 paragraph (2) of subdivision (c) shall file and pay by the due date
39 all subsequently required emergency telephone users surcharge
40 returns for a five-year period from the date the liability is

1 compromised, or until the surcharge payer is no longer required
2 to file emergency telephone users surcharge returns, whichever
3 period is earlier.

4 (h) Offers in compromise shall not be considered where the
5 surcharge payer has been convicted of felony tax evasion under
6 this part during the liability period.

7 (i) For amounts to be compromised under this section, the
8 following conditions shall exist:

9 (1) The surcharge payer shall establish that:

10 (A) The amount offered in payment is the most that can be
11 expected to be paid or collected from the surcharge payer's present
12 assets or income.

13 (B) The surcharge payer does not have reasonable prospects of
14 acquiring increased income or assets that would enable the
15 surcharge payer to satisfy a greater amount of the liability than the
16 amount offered, within a reasonable period of time.

17 (2) The board shall have determined that acceptance of the
18 compromise is in the best interest of the state.

19 (j) A determination by the board that it would not be in the best
20 interest of the state to accept an offer in compromise in satisfaction
21 of a final surcharge liability shall not be subject to administrative
22 appeal or judicial review.

23 (k) (1) Offers for liabilities with a fraud or evasion penalty shall
24 require a minimum offer of the unpaid surcharge and fraud or
25 evasion penalty.

26 (2) The minimum offer may be waived if it can be shown that
27 the surcharge payer making the offer was not the person responsible
28 for perpetrating the fraud or evasion. This authorization to waive
29 only applies to partnership accounts where the intent to commit
30 fraud or evasion can be clearly attributed to a partner of the
31 surcharge payer.

32 (l) When an offer in compromise is either accepted or rejected,
33 or the terms and conditions of a compromise agreement are
34 fulfilled, the board shall notify the surcharge payer in writing. In
35 the event an offer is rejected, the amount posted will either be
36 applied to the liability or refunded, at the discretion of the surcharge
37 payer.

38 (m) When more than one surcharge payer is liable for the debt,
39 such as with spouses or partnerships or other business
40 combinations, including, but not limited to, surcharge payers who

1 are liable through dual determination or successor's liability, the
2 acceptance of an offer in compromise from one liable surcharge
3 payer shall reduce the amount of the liability of the other surcharge
4 payers by the amount of the accepted offer.

5 (n) Whenever a compromise of surcharges or penalties or total
6 surcharges and penalties in excess of five hundred dollars (\$500)
7 is approved, there shall be placed on file for at least one year in
8 the office of the executive director of the board a public record
9 with respect to that compromise. The public record shall include
10 all of the following information:

- 11 (1) The name of the surcharge payer.
- 12 (2) The amount of unpaid surcharges and related penalties,
13 additions to surcharges, interest, or other amounts involved.
- 14 (3) The amount offered.
- 15 (4) A summary of the reason why the compromise is in the best
16 interest of the state.

17 The public record shall not include any information that relates
18 to any trade secrets, patent, process, style of work, apparatus,
19 business secret, or organizational structure, that if disclosed, would
20 adversely affect the surcharge payer or violate the confidentiality
21 provisions of Section 41131. No list shall be prepared and no
22 releases distributed by the board in connection with these
23 statements.

24 (o) Any compromise made under this section may be rescinded,
25 all compromised liabilities may be reestablished, without regard
26 to any statute of limitations that otherwise may be applicable, and
27 no portion of the amount offered in compromise refunded, if either
28 of the following occurs:

29 (1) The board determines that any person did any of the
30 following acts regarding the making of the offer:

31 (A) Concealed from the board any property belonging to the
32 estate of any surcharge payer or other person liable for the
33 surcharge.

34 (B) Received, withheld, destroyed, mutilated, or falsified any
35 book, document, or record or made any false statement, relating
36 to the estate or financial condition of the surcharge payer or other
37 person liable for the surcharge.

38 (2) The surcharge payer fails to comply with any of the terms
39 and conditions relative to the offer.

(p) Any person who, in connection with any offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars (\$50,000) or imprisoned in the state prison, or both, together with the costs of investigation and prosecution:

(1) Conceals from any officer or employee of this state any property belonging to the estate of a surcharge payer or other person liable in respect of the surcharge.

(2) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the surcharge payer or other person liable in respect of the surcharge.

(q) For purposes of this section, “person” means the surcharge payer, any member of the surcharge payer’s family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the surcharge payer, or any other corporation or entity owned or controlled by the surcharge payer, directly or indirectly, or that owns or controls the surcharge payer, directly or indirectly.

SEC. 6. Section 46628 of the Revenue and Taxation Code is amended to read:

46628. (a) (1) Beginning on January 1, 2007, the executive director and chief counsel of the board, or their delegates, may compromise any final fee liability where the reduction of fees is seven thousand five hundred dollars (\$7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final fee liability involving a reduction in fees in excess of seven thousand five hundred dollars (\$7,500). Any recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final fee liability in which the reduction of fees is in excess of seven thousand five hundred dollars (\$7,500), but less than ten thousand dollars (\$10,000).

(b) For purposes of this section, “a final fee liability” means any final fee liability arising under Part 24 (commencing with

1 Section 46001), or related interest, additions to fees, penalties, or
2 other amounts assessed under this part.

3 (c) (1) Offers in compromise shall be considered only for
4 liabilities that were generated from a business that has been
5 discontinued or transferred, where the feepayer making the offer
6 no longer has a controlling interest or association with the
7 transferred business or has a controlling interest or association
8 with a similar type of business as the transferred or discontinued
9 business.

10 (2) Notwithstanding paragraph (1), a qualified final fee liability
11 may be compromised regardless of whether the business has been
12 discontinued or transferred or whether the feepayer has a
13 controlling interest or association with a similar type of business
14 as the transferred or discontinued business. All other provisions
15 of this section that apply to a final fee liability shall also apply to
16 a qualified final fee liability, and no compromise shall be made
17 under this subdivision unless all other requirements of this section
18 are met. For purposes of this subdivision, a “qualified final fee
19 liability” means any of the following:

20 (A) That part of a final fee liability, including related interest,
21 additions to fee, penalties or other amounts assessed under this
22 part, arising from a transaction or transactions in which ~~there is~~
23 *the board finds* no evidence that the marine terminal operator or
24 operator of a pipeline collected the oil spill prevention and
25 administration fee from the owner of the petroleum products or
26 crude oil or other person and which was determined against the
27 feepayer under Article 2 (commencing with Section 46201), Article
28 3 (commencing with Section 46251), or Article 5 (commencing
29 with Section 46351) of Chapter 3.

30 (B) A final fee liability, including related interest, additions to
31 fee, penalties or other amounts assessed under this part, arising
32 under Article 6 (commencing with Section 46451) of Chapter 4.

33 (C) That part of a final fee liability, including related interest,
34 additions to fee, penalties or other amounts assessed under this
35 part, determined under Article 2 (commencing with Section 46201),
36 Article 3 (commencing with Section 46251), and Article 5
37 (commencing with Section 46351) of Chapter 3 against an owner
38 of crude oil or petroleum products that is not required to register
39 with the board under Article 2 (commencing with section 46101)
40 of Chapter 2.

1 (3) A qualified final fee liability may not be compromised with
2 any of the following:

3 (A) A feepayer who previously received a compromise under
4 paragraph (2) for a liability, or a part thereof, arising from a
5 transaction or transactions that are substantially similar to the
6 transaction or transactions attributable to the liability for which
7 the feepayer is making the offer.

8 (B) A business that was transferred by a feepayer who previously
9 received a compromise under paragraph (2) and who has a
10 controlling interest or association with the transferred business,
11 when the liability for which the offer is made is attributable to a
12 transaction or transactions substantially similar to the transaction
13 or transactions for which the feepayer's liability was previously
14 compromised.

15 (C) A business in which a feepayer who previously received a
16 compromise under paragraph (2) has a controlling interest or
17 association with a similar type of business for which the feepayer
18 received the compromise, when the liability of the business making
19 the offer arose from a transaction or transactions substantially
20 similar to the transaction or transactions for which the feepayer's
21 liability was previously compromised.

22 (d) The board may, in its discretion, enter into ~~an~~ *a written*
23 agreement which permits the feepayer to pay the compromise in
24 installments for a period not exceeding one year. The agreement
25 may provide that such installments shall be paid by electronic
26 funds transfers or any other means to facilitate the payment of each
27 installment.

28 (e) Except for any recommendation for approval as specified
29 in subdivision (a), the members of the State Board of Equalization
30 shall not participate in any offer in compromise matters pursuant
31 to this section.

32 (f) A feepayer that has received a compromise under paragraph
33 (2) of subdivision (c) may be required to enter into any collateral
34 agreement that is deemed necessary for the protection of the
35 interests of the state. A collateral agreement may include a
36 provision that allows the board to reestablish the liability, or any
37 portion thereof, if the feepayer has sufficient annual income during
38 the succeeding five-year period. The board shall establish criteria
39 for determining "sufficient annual income" for purposes of this
40 subdivision.

1 (g) A feepayer that has received a compromise under paragraph
2 (2) of subdivision (c) shall file and pay by the due date all
3 subsequently required oil spill prevention and administration fee
4 returns for a five-year period from the date the liability is
5 compromised, or until the feepayer is no longer required to file oil
6 spill prevention and administration fee returns, whichever period
7 is earlier.

8 (h) Offers in compromise shall not be considered where the
9 feepayer has been convicted of felony tax evasion under this part
10 during the liability period.

11 (i) For amounts to be compromised under this section, the
12 following conditions shall exist:

13 (1) The feepayer shall establish that:

14 (A) The amount offered in payment is the most that can be
15 expected to be paid or collected from the feepayer's present assets
16 or income.

17 (B) The feepayer does not have reasonable prospects of
18 acquiring increased income or assets that would enable the feepayer
19 to satisfy a greater amount of the liability than the amount offered,
20 within a reasonable period of time.

21 (2) The board shall have determined that acceptance of the
22 compromise is in the best interest of the state.

23 (j) A determination by the board that it would not be in the best
24 interest of the state to accept an offer in compromise in satisfaction
25 of a final fee liability shall not be subject to administrative appeal
26 or judicial review.

27 (k) (1) Offers for liabilities with a fraud or evasion penalty shall
28 require a minimum offer of the unpaid fee and fraud or evasion
29 penalty.

30 (2) The minimum offer may be waived if it can be shown that
31 the feepayer making the offer was not the person responsible for
32 perpetrating the fraud or evasion. This authorization to waive only
33 applies to partnership accounts where the intent to commit fraud
34 or evasion can be clearly attributed to a partner of the feepayer.

35 (l) When an offer in compromise is either accepted or rejected,
36 or the terms and conditions of a compromise agreement are
37 fulfilled, the board shall notify the feepayer in writing. In the event
38 an offer is rejected, the amount posted will either be applied to the
39 liability or refunded, at the discretion of the feepayer.

(m) When more than one feepayer is liable for the debt, such as with spouses or partnerships or other business combinations, including, but not limited to, feepayers who are liable through dual determination or successor's liability, the acceptance of an offer in compromise from one liable feepayer shall reduce the amount of the liability of the other feepayers by the amount of the accepted offer.

(n) Whenever a compromise of fees or penalties or total fees and penalties in excess of five hundred dollars (\$500) is approved, there shall be placed on file for at least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:

(1) The name of the feepayer.

(2) The amount of unpaid fees and related penalties, additions to fees, interest, or other amounts involved.

(3) The amount offered.

(4) A summary of the reason why the compromise is in the best interest of the state.

The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the feepayer or violate the confidentiality provisions of Section 40175. No list shall be prepared and no releases distributed by the board in connection with these statements.

(o) Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished, without regard to any statute of limitations that otherwise may be applicable, and no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The board determines that any person did any of the following acts regarding the making of the offer:

(A) Concealed from the board any property belonging to the estate of any feepayer or other person liable for the fee.

(B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating to the estate or financial condition of the feepayer or other person liable for the fee.

1 (2) The feepayer fails to comply with any of the terms and
2 conditions relative to the offer.

3 (p) Any person who, in connection with any offer or compromise
4 under this section, or offer of that compromise to enter into that
5 agreement, willfully does either of the following shall be guilty of
6 a felony and, upon conviction, shall be fined not more than fifty
7 thousand dollars (\$50,000) or imprisoned in the state prison, or
8 both, together with the costs of investigation and prosecution:

9 (1) Conceals from any officer or employee of this state any
10 property belonging to the estate of a feepayer or other person liable
11 in respect of the fee.

12 (2) Receives, withholds, destroys, mutilates, or falsifies any
13 book, document, or record, or makes any false statement, relating
14 to the estate or financial condition of the feepayer or other person
15 liable in respect of the fee.

16 (q) For purposes of this section, “person” means the feepayer,
17 any member of the feepayer’s family, any corporation, agent,
18 fiduciary, or representative of, or any other individual or entity
19 acting on behalf of, the feepayer, or any other corporation or entity
20 owned or controlled by the feepayer, directly or indirectly, or that
21 owns or controls the feepayer, directly or indirectly.

22 SEC. 7. Section 50156.18 of the Revenue and Taxation Code
23 is amended to read:

24 50156.18. (a) (1) Beginning January 1, 2003, the executive
25 director and chief counsel of the board, or their delegates, may
26 compromise any final fee liability in which the reduction of the
27 fee is seven thousand five hundred dollars (\$7,500) or less.

28 (2) Except as provided in paragraph (3), the board, upon
29 recommendation by its executive director and chief counsel, jointly,
30 may compromise a final fee liability involving a reduction in the
31 fee in excess of seven thousand five hundred dollars (\$7,500). Any
32 recommendation for approval of an offer in compromise that is
33 not either approved or disapproved within 45 days of the
34 submission of the recommendation shall be deemed approved.

35 (3) The board, itself, may by resolution delegate to the executive
36 director and the chief counsel, jointly, the authority to compromise
37 a final fee liability in which the reduction of the fee is in excess
38 of seven thousand five hundred dollars (\$7,500), but less than ten
39 thousand dollars (\$10,000).

1 (b) For purposes of this section, “a final fee liability” means
2 any final fee liability arising under Part 26 (commencing with
3 Section 50101), or related interest, additions to the fee, penalties,
4 or other amounts assessed under this part.

5 (c) (1) Offers in compromise shall be considered only for
6 liabilities that were generated from a business that has been
7 discontinued or transferred, where the feepayer making the offer
8 no longer has a controlling interest or association with the
9 transferred business or has a controlling interest or association
10 with a similar type of business as the transferred or discontinued
11 business.

12 (2) Notwithstanding paragraph (1), a qualified final fee liability
13 may be compromised regardless of whether the business has been
14 discontinued or transferred or whether the feepayer has a
15 controlling interest or association with a similar type of business
16 as the transferred or discontinued business. All other provisions
17 of this section that apply to a final fee liability shall also apply to
18 a qualified final fee liability, and no compromise shall be made
19 under this subdivision unless all other requirements of this section
20 are met. For purposes of this subdivision, a “qualified final fee
21 liability” means that part of a final fee liability, including related
22 interest, additions to fee, penalties or other amounts assessed under
23 this part, arising from a transaction or transactions in which ~~there~~
24 *is the board finds* no evidence that the owner of the underground
25 storage tank collected underground storage tank maintenance fee
26 reimbursement from the operator of the underground storage tank
27 or other person and which was determined against the feepayer
28 under Article 2 (commencing with Section 50113) or Article 3
29 (commencing with Section 50114) of Chapter 3.

30 (3) A qualified final fee liability may not be compromised with
31 any of the following:

32 (A) A feepayer who previously received a compromise under
33 paragraph (2) for a liability, or a part thereof, arising from a
34 transaction or transactions that are substantially similar to the
35 transaction or transactions attributable to the liability for which
36 the feepayer is making the offer.

37 (B) A business that was transferred by a feepayer who previously
38 received a compromise under paragraph (2) and who has a
39 controlling interest or association with the transferred business,
40 when the liability for which the offer is made is attributable to a

1 transaction or transactions substantially similar to the transaction
2 or transactions for which the feepayer's liability was previously
3 compromised.

4 (C) A business in which a feepayer who previously received a
5 compromise under paragraph (2) has a controlling interest or
6 association with a similar type of business for which the feepayer
7 received the compromise, when the liability of the business making
8 the offer arose from a transaction or transactions substantially
9 similar to the transaction or transactions for which the feepayer's
10 liability was previously compromised.

11 (d) The board may, in its discretion, enter into ~~an~~ *a written*
12 agreement which permits the feepayer to pay the compromise in
13 installments for a period not exceeding one year. The agreement
14 may provide that such installments shall be paid by electronic
15 funds transfers or any other means to facilitate the payment of each
16 installment.

17 (e) Except for any recommendation for approval as specified
18 in subdivision (a), the members of the State Board of Equalization
19 shall not participate in any offer in compromise matters pursuant
20 to this section.

21 (f) A feepayer that has received a compromise under paragraph
22 (2) of subdivision (c) may be required to enter into any collateral
23 agreement that is deemed necessary for the protection of the
24 interests of the state. A collateral agreement may include a
25 provision that allows the board to reestablish the liability, or any
26 portion thereof, if the feepayer has sufficient annual income during
27 the succeeding five-year period. The board shall establish criteria
28 for determining "sufficient annual income" for purposes of this
29 subdivision.

30 (g) A feepayer that has received a compromise under paragraph
31 (2) of subdivision (c) shall file and pay by the due date all
32 subsequently required underground storage tank maintenance fee
33 returns for a five-year period from the date the liability is
34 compromised, or until the feepayer is no longer required to file
35 underground storage tank maintenance fee returns, whichever
36 period is earlier.

37 (h) For amounts to be compromised under this section, the
38 following conditions shall exist:

39 (1) The feepayer shall establish that:

1 (A) The amount offered in payment is the most that can be
2 expected to be paid or collected from the feepayer's present assets
3 or income.

4 (B) The feepayer does not have reasonable prospects of
5 acquiring increased income or assets that would enable the feepayer
6 to satisfy a greater amount of the liability than the amount offered,
7 within a reasonable period of time.

8 (2) The board shall have determined that acceptance of the
9 compromise is in the best interest of the state.

10 (i) A determination by the board that it would not be in the best
11 interest of the state to accept an offer in compromise in satisfaction
12 of a final fee liability shall not be subject to administrative appeal
13 or judicial review.

14 (j) When an offer in compromise is either accepted or rejected,
15 or the terms and conditions of a compromise agreement are
16 fulfilled, the board shall notify the feepayer in writing. In the event
17 an offer is rejected, the amount posted will either be applied to the
18 liability or refunded, at the discretion of the feepayer.

19 (k) When more than one feepayer is liable for the debt, such as
20 with spouses or partnerships or other business combinations, the
21 acceptance of an offer in compromise from one liable feepayer
22 shall not relieve the other feepayers from paying the entire liability.
23 However, the amount of the liability shall be reduced by the amount
24 of the accepted offer.

25 (l) Whenever a compromise of the fee or penalties or total fees
26 and penalties in excess of five hundred dollars (\$500) is approved,
27 there shall be placed on file for a least one year in the office of the
28 executive director of the board a public record with respect to that
29 compromise. The public record shall include all of the following
30 information:

31 (1) The name of the feepayer.

32 (2) The amount of unpaid fees and related penalties, additions
33 to fees, interest, or other amounts involved.

34 (3) The amount offered.

35 (4) A summary of the reason why the compromise is in the best
36 interest of the state.

37 The public record shall not include any information that relates
38 to any trade secrets, patent, process, style of work, apparatus,
39 business secret, or organizational structure, that if disclosed, would
40 adversely affect the feepayer or violate the confidentiality

1 provisions of Chapter 8 of Article 2 (commencing with Section
2 50156). No list shall be prepared and no releases distributed by
3 the board in connection with these statements.

4 (m) Any compromise made under this section may be rescinded,
5 all compromised liabilities may be reestablished (without regard
6 to any statute of limitations that otherwise may be applicable), and
7 no portion of the amount offered in compromise refunded, if either
8 of the following occurs:

9 (1) The board determines that any person did any of the
10 following acts regarding the making of the offer:

11 (A) Concealed from the board any property belonging to the
12 estate of any feepayer or other person liable for the fee.

13 (B) Received, withheld, destroyed, mutilated, or falsified any
14 book, document, or record or made any false statement, relating
15 to the estate or financial condition of the feepayer or other person
16 liable for the fee.

17 (2) The feepayer fails to comply with any of the terms and
18 conditions relative to the offer.

19 (n) Any person who, in connection with any offer or compromise
20 under this section, or offer of that compromise to enter into that
21 agreement, willfully does either of the following shall be guilty of
22 a felony and, upon conviction, shall be fined not more than fifty
23 thousand dollars (\$50,000) or imprisoned in the state prison, or
24 both, together with the costs of investigation and prosecution:

25 (1) Conceals from any officer or employee of this state any
26 property belonging to the estate of a feepayer or other person liable
27 in respect of the fee.

28 (2) Receives, withholds, destroys, mutilates, or falsifies any
29 book, document, or record, or makes any false statement, relating
30 to the estate or financial condition of the feepayer or other person
31 liable in respect of the fee.

32 (o) For purposes of this section, “person” means the feepayer,
33 any member of the feepayer’s family, any corporation, agent,
34 fiduciary, or representative of, or any other individual or entity
35 acting on behalf of, the feepayer, or any other corporation or entity
36 owned or controlled by the feepayer, directly or indirectly, or that
37 owns or controls the feepayer, directly or indirectly.

38 SEC. 8. Section 55332.5 of the Revenue and Taxation Code
39 is amended to read:

1 55332.5. (a) (1) Beginning on January 1, 2007, the executive
2 director and chief counsel of the board, or their delegates, may
3 compromise any final fee liability where the reduction of fees is
4 seven thousand five hundred dollars (\$7,500) or less.

5 (2) Except as provided in paragraph (3), the board, upon
6 recommendation by its executive director and chief counsel, jointly,
7 may compromise a final fee liability involving a reduction in fees
8 in excess of seven thousand five hundred dollars (\$7,500). Any
9 recommendation for approval of an offer in compromise that is
10 not either approved or disapproved within 45 days of the
11 submission of the recommendation shall be deemed approved.

12 (3) The board, itself, may by resolution delegate to the executive
13 director and the chief counsel, jointly, the authority to compromise
14 a final fee liability in which the reduction of fees is in excess of
15 seven thousand five hundred dollars (\$7,500), but less than ten
16 thousand dollars (\$10,000).

17 (b) For purposes of this section, “a final fee liability” means
18 any final fee liability arising under Part 30 (commencing with
19 Section 55001), or related interest, additions to fees, penalties, or
20 other amounts assessed under this part.

21 (c) (1) Offers in compromise shall be considered only for
22 liabilities that were generated from a business that has been
23 discontinued or transferred, where the feepayer making the offer
24 no longer has a controlling interest or association with the
25 transferred business or has a controlling interest or association
26 with a similar type of business as the transferred or discontinued
27 business.

28 (2) Notwithstanding paragraph (1), a qualified final fee liability
29 may be compromised regardless of whether the business has been
30 discontinued or transferred or whether the feepayer has a
31 controlling interest or association with a similar type of business
32 as the transferred or discontinued business. All other provisions
33 of this section that apply to a final fee liability shall also apply to
34 a qualified final fee liability, and no compromise shall be made
35 under this subdivision unless all other requirements of this section
36 are met. For purposes of this subdivision, a “qualified final fee
37 liability” means that part of a final fee liability, including related
38 interest, additions to fee, penalties or other amounts assessed under
39 this part, arising from a transaction or transactions in which ~~there~~
40 *is the board finds* no evidence that the feepayer collected the fee

1 from the purchaser or other person and which was determined
2 against the feepayer under Article 2 (commencing with Section
3 55061) or Article 3 (commencing with Section 55081) of Chapter
4 3.

5 (3) A qualified final fee liability may not be compromised with
6 any of the following:

7 (A) A feepayer who previously received a compromise under
8 paragraph (2) for a liability, or a part thereof, arising from a
9 transaction or transactions that are substantially similar to the
10 transaction or transactions attributable to the liability for which
11 the feepayer is making the offer.

12 (B) A business that was transferred by a feepayer who previously
13 received a compromise under paragraph (2) and who has a
14 controlling interest or association with the transferred business,
15 when the liability for which the offer is made is attributable to a
16 transaction or transactions substantially similar to the transaction
17 or transactions for which the feepayer's liability was previously
18 compromised.

19 (C) A business in which a feepayer who previously received a
20 compromise under paragraph (2) has a controlling interest or
21 association with a similar type of business for which the feepayer
22 received the compromise, when the liability of the business making
23 the offer arose from a transaction or transactions substantially
24 similar to the transaction or transactions for which the feepayer's
25 liability was previously compromised.

26 (d) The board may, in its discretion, enter into ~~an~~ *a written*
27 agreement which permits the feepayer to pay the compromise in
28 installments for a period not exceeding one year. The agreement
29 may provide that such installments shall be paid by electronic
30 funds transfers or any other means to facilitate the payment of each
31 installment.

32 (e) Except for any recommendation for approval as specified
33 in subdivision (a), the members of the State Board of Equalization
34 shall not participate in any offer in compromise matters pursuant
35 to this section.

36 (f) A feepayer that has received a compromise under paragraph
37 (2) of subdivision (c) may be required to enter into any collateral
38 agreement that is deemed necessary for the protection of the
39 interests of the state. A collateral agreement may include a
40 provision that allows the board to reestablish the liability, or any

1 portion thereof, if the feepayer has sufficient annual income during
2 the succeeding five-year period. The board shall establish criteria
3 for determining “sufficient annual income” for purposes of this
4 subdivision.

5 (g) A feepayer that has received a compromise under paragraph
6 (2) of subdivision (c) shall file and pay by the due date all
7 subsequently required returns for a five-year period from the date
8 the liability is compromised, or until the feepayer is no longer
9 required to file returns, whichever period is earlier.

10 (h) Offers in compromise shall not be considered where the
11 feepayer has been convicted of felony tax evasion under this part
12 during the liability period.

13 (i) For amounts to be compromised under this section, the
14 following conditions shall exist:

15 (1) The feepayer shall establish that:

16 (A) The amount offered in payment is the most that can be
17 expected to be paid or collected from the feepayer’s present assets
18 or income.

19 (B) The feepayer does not have reasonable prospects of
20 acquiring increased income or assets that would enable the feepayer
21 to satisfy a greater amount of the liability than the amount offered,
22 within a reasonable period of time.

23 (2) The board shall have determined that acceptance of the
24 compromise is in the best interest of the state.

25 (j) A determination by the board that it would not be in the best
26 interest of the state to accept an offer in compromise in satisfaction
27 of a final fee liability shall not be subject to administrative appeal
28 or judicial review.

29 (k) (1) Offers for liabilities with a fraud or evasion penalty shall
30 require a minimum offer of the unpaid fee and fraud or evasion
31 penalty.

32 (2) The minimum offer may be waived if it can be shown that
33 the feepayer making the offer was not the person responsible for
34 perpetrating the fraud or evasion. This authorization to waive only
35 applies to partnership accounts where the intent to commit fraud
36 or evasion can be clearly attributed to a partner of the feepayer.

37 (l) When an offer in compromise is either accepted or rejected,
38 or the terms and conditions of a compromise agreement are
39 fulfilled, the board shall notify the feepayer in writing. In the event

1 an offer is rejected, the amount posted will either be applied to the
2 liability or refunded, at the discretion of the feepayer.

3 (m) When more than one feepayer is liable for the debt, such
4 as with spouses or partnerships or other business combinations,
5 including, but not limited to, feepayers who are liable through dual
6 determination or successor's liability, the acceptance of an offer
7 in compromise from one liable feepayer shall reduce the amount
8 of the liability of the other feepayers by the amount of the accepted
9 offer.

10 (n) Whenever a compromise of fees or penalties or total fees
11 and penalties in excess of five hundred dollars (\$500) is approved,
12 there shall be placed on file for at least one year in the office of
13 the executive director of the board a public record with respect to
14 that compromise. The public record shall include all of the
15 following information:

16 (1) The name of the feepayer.

17 (2) The amount of unpaid fees and related penalties, additions
18 to fees, interest, or other amounts involved.

19 (3) The amount offered.

20 (4) A summary of the reason why the compromise is in the best
21 interest of the state.

22 The public record shall not include any information that relates
23 to any trade secrets, patent, process, style of work, apparatus,
24 business secret, or organizational structure, that if disclosed, would
25 adversely affect the feepayer or violate the confidentiality
26 provisions of Section 55381. No list shall be prepared and no
27 releases distributed by the board in connection with these
28 statements.

29 (o) Any compromise made under this section may be rescinded,
30 all compromised liabilities may be reestablished, without regard
31 to any statute of limitations that otherwise may be applicable, and
32 no portion of the amount offered in compromise refunded, if either
33 of the following occurs:

34 (1) The board determines that any person did any of the
35 following acts regarding the making of the offer:

36 (A) Concealed from the board any property belonging to the
37 estate of any feepayer or other person liable for the fee.

38 (B) Received, withheld, destroyed, mutilated, or falsified any
39 book, document, or record or made any false statement, relating

1 to the estate or financial condition of the feepayer or other person
2 liable for the fee.

3 (2) The feepayer fails to comply with any of the terms and
4 conditions relative to the offer.

5 (p) Any person who, in connection with any offer or compromise
6 under this section, or offer of that compromise to enter into that
7 agreement, willfully does either of the following shall be guilty of
8 a felony and, upon conviction, shall be fined not more than fifty
9 thousand dollars (\$50,000) or imprisoned in the state prison, or
10 both, together with the costs of investigation and prosecution:

11 (1) Conceals from any officer or employee of this state any
12 property belonging to the estate of a feepayer or other person liable
13 in respect of the fee.

14 (2) Receives, withholds, destroys, mutilates, or falsifies any
15 book, document, or record, or makes any false statement, relating
16 to the estate fee.

17 (q) For purposes of this section, “person” means the feepayer,
18 any member of the feepayer’s family, any corporation, agent,
19 fiduciary, or representative of, or any other individual or entity
20 acting on behalf of, the feepayer, or any other corporation or entity
21 owned or controlled by the feepayer, directly or indirectly, or that
22 owns or controls the feepayer, directly or indirectly.

23 SEC. 9. Section 60637 of the Revenue and Taxation Code is
24 amended to read:

25 60637. (a) (1) Beginning on January 1, 2007, the executive
26 director and chief counsel of the board, or their delegates, may
27 compromise any final tax liability where the reduction of tax is
28 seven thousand five hundred dollars (\$7,500) or less.

29 (2) Except as provided in paragraph (3), the board, upon
30 recommendation by its executive director and chief counsel, jointly,
31 may compromise a final tax liability involving a reduction in tax
32 in excess of seven thousand five hundred dollars (\$7,500). Any
33 recommendation for approval of an offer in compromise that is
34 not either approved or disapproved within 45 days of the
35 submission of the recommendation shall be deemed approved.

36 (3) The board, itself, may by resolution delegate to the executive
37 director and the chief counsel, jointly, the authority to compromise
38 a final tax liability in which the reduction of tax is in excess of
39 seven thousand five hundred dollars (\$7,500), but less than ten
40 thousand dollars (\$10,000).

1 (b) For purposes of this section, “a final tax liability” means
2 any final tax liability arising under Part 31 (commencing with
3 Section 60001), or related interest, additions to tax, penalties, or
4 other amounts assessed under this part.

5 (c) (1) Offers in compromise shall be considered only for
6 liabilities that were generated from a business that has been
7 discontinued or transferred, where the taxpayer making the offer
8 no longer has a controlling interest or association with the
9 transferred business or has a controlling interest or association
10 with a similar type of business as the transferred or discontinued
11 business.

12 (2) Notwithstanding paragraph (1), a qualified final tax liability
13 may be compromised regardless of whether the business has been
14 discontinued or transferred or whether the taxpayer has a
15 controlling interest or association with a similar type of business
16 as the transferred or discontinued business. All other provisions
17 of this section that apply to a final tax liability shall also apply to
18 a qualified final tax liability, and no compromise shall be made
19 under this subdivision unless all other requirements of this section
20 are met. For purposes of this subdivision, a “qualified final tax
21 liability” means any of the following:

22 (A) That part of a final tax liability, including related interest,
23 additions to tax, penalties or other amounts assessed under this
24 part, arising from a transaction or transactions in which ~~there is~~
25 *the board finds* no evidence that the supplier collected diesel fuel
26 tax reimbursement from the purchaser or other person and which
27 was determined by the board against the taxpayer under Article 2
28 (commencing with Section 60301), Article 3 (commencing with
29 Section 60310), Article 5 (commencing with Section 60350), or
30 Article 6 (commencing with Section 60360) of Chapter 6.

31 (B) A final tax liability, including related interest, additions to
32 tax, penalties or other amounts assessed under this part, arising
33 under Article 6 (commencing with Section 60471) of Chapter 7.

34 (C) That part of a final tax liability for diesel fuel tax, including
35 related interest, additions to tax, penalties or other amounts
36 assessed under this part, determined under Article 2 (commencing
37 with Section 60301), Article 3 (commencing with Section 60310),
38 Article 5 (commencing with Section 60350) and Article 6
39 (commencing with Section 60360) of Chapter 6 against an exempt

1 bus operator, government entity, or qualified highway vehicle
2 operator who used dyed diesel fuel on the highway.

3 (3) A qualified final tax liability may not be compromised with
4 any of the following:

5 (A) A taxpayer who previously received a compromise under
6 paragraph (2) for a liability, or a part thereof, arising from a
7 transaction or transactions that are substantially similar to the
8 transaction or transactions attributable to the liability for which
9 the taxpayer is making the offer.

10 (B) A business that was transferred by a taxpayer who previously
11 received a compromise under paragraph (2) and who has a
12 controlling interest or association with the transferred business,
13 when the liability for which the offer is made is attributable to a
14 transaction or transactions substantially similar to the transaction
15 or transactions for which the taxpayer's liability was previously
16 compromised.

17 (C) A business in which a taxpayer who previously received a
18 compromise under paragraph (2) has a controlling interest or
19 association with a similar type of business for which the taxpayer
20 received the compromise, when the liability of the business making
21 the offer arose from a transaction or transactions substantially
22 similar to the transaction or transactions for which the taxpayer's
23 liability was previously compromised.

24 (d) The board may, in its discretion, enter into ~~an~~ *a written*
25 agreement which permits the taxpayer to pay the compromise in
26 installments for a period not exceeding one year. The agreement
27 may provide that such installments shall be paid by electronic
28 funds transfers or any other means to facilitate the payment of each
29 installment.

30 (e) Except for any recommendation for approval as specified
31 in subdivision (a), the members of the State Board of Equalization
32 shall not participate in any offer in compromise matters pursuant
33 to this section.

34 (f) A taxpayer that has received a compromise under paragraph
35 (2) of subdivision (c) may be required to enter into any collateral
36 agreement that is deemed necessary for the protection of the
37 interests of the state. A collateral agreement may include a
38 provision that allows the board to reestablish the liability, or any
39 portion thereof, if the taxpayer has sufficient annual income during
40 the succeeding five-year period. The board shall establish criteria

1 for determining “sufficient annual income” for purposes of this
2 subdivision.

3 (g) A taxpayer that has received a compromise under paragraph
4 (2) of subdivision (c) shall file and pay by the due date all
5 subsequently required returns for a five-year period from the date
6 the liability is compromised, or until the taxpayer is no longer
7 required to file returns, whichever period is earlier.

8 (h) Offers in compromise shall not be considered where the
9 taxpayer has been convicted of felony tax evasion under this part
10 during the liability period.

11 (i) For amounts to be compromised under this section, the
12 following conditions shall exist:

13 (1) The taxpayer shall establish that:

14 (A) The amount offered in payment is the most that can be
15 expected to be paid or collected from the taxpayer’s present assets
16 or income.

17 (B) The taxpayer does not have reasonable prospects of
18 acquiring increased income or assets that would enable the taxpayer
19 to satisfy a greater amount of the liability than the amount offered,
20 within a reasonable period of time.

21 (2) The board shall have determined that acceptance of the
22 compromise is in the best interest of the state.

23 (j) A determination by the board that it would not be in the best
24 interest of the state to accept an offer in compromise in satisfaction
25 of a final tax liability shall not be subject to administrative appeal
26 or judicial review.

27 (k) (1) Offers for liabilities with a fraud or evasion penalty shall
28 require a minimum offer of the unpaid tax and fraud or evasion
29 penalty.

30 (2) The minimum offer may be waived if it can be shown that
31 the taxpayer making the offer was not the person responsible for
32 perpetrating the fraud or evasion. This authorization to waive only
33 applies to partnership accounts where the intent to commit fraud
34 or evasion can be clearly attributed to a partner of the taxpayer.

35 (l) When an offer in compromise is either accepted or rejected,
36 or the terms and conditions of a compromise agreement are
37 fulfilled, the board shall notify the taxpayer in writing. In the event
38 an offer is rejected, the amount posted will either be applied to the
39 liability or refunded, at the discretion of the taxpayer.

(m) When more than one taxpayer is liable for the debt, such as with spouses or partnerships or other business combinations, including, but not limited to, taxpayers who are liable through dual determination or successor's liability, the acceptance of an offer in compromise from one liable taxpayer shall reduce the amount of the liability of the other taxpayers by the amount of the accepted offer.

(n) Whenever a compromise of tax or penalties or total tax and penalties in excess of five hundred dollars (\$500) is approved, there shall be placed on file for at least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:

(1) The name of the taxpayer.

(2) The amount of unpaid tax and related penalties, additions to tax, interest, or other amounts involved.

(3) The amount offered.

(4) A summary of the reason why the compromise is in the best interest of the state.

The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the taxpayer or violate the confidentiality provisions of Section 60609. No list shall be prepared and no releases distributed by the board in connection with these statements.

(o) Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished, without regard to any statute of limitations that otherwise may be applicable, and no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The board determines that any person did any of the following acts regarding the making of the offer:

(A) Concealed from the board any property belonging to the estate of any taxpayer or other person liable for the tax.

(B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating to the estate or financial condition of the taxpayer or other person liable for the tax.

1 (2) The taxpayer fails to comply with any of the terms and
2 conditions relative to the offer.

3 (p) Any person who, in connection with any offer or compromise
4 under this section, or offer of that compromise to enter into that
5 agreement, willfully does either of the following shall be guilty of
6 a felony and, upon conviction, shall be fined not more than fifty
7 thousand dollars (\$50,000) or imprisoned in the state prison, or
8 both, together with the costs of investigation and prosecution:

9 (1) Conceals from any officer or employee of this state any
10 property belonging to the estate of a taxpayer or other person liable
11 in respect of the tax.

12 (2) Receives, withholds, destroys, mutilates, or falsifies any
13 book, document, or record, or makes any false statement, relating
14 to the estate or financial condition of the taxpayer or other person
15 liable in respect of the tax.

16 (q) For purposes of this section, “person” means the taxpayer,
17 any member of the taxpayer’s family, any corporation, agent,
18 fiduciary, or representative of, or any other individual or entity
19 acting on behalf of, the taxpayer, or any other corporation or entity
20 owned or controlled by the taxpayer, directly or indirectly, or that
21 owns or controls the taxpayer, directly or indirectly.

22 SEC. 10. No reimbursement is required by this act pursuant to
23 Section 6 of Article XIII B of the California Constitution because
24 the only costs that may be incurred by a local agency or school
25 district will be incurred because this act creates a new crime or
26 infraction, eliminates a crime or infraction, or changes the penalty
27 for a crime or infraction, within the meaning of Section 17556 of
28 the Government Code, or changes the definition of a crime within
29 the meaning of Section 6 of Article XIII B of the California
30 Constitution.